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RIGHTS OF THE CHILD

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos

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Executive Summary

This report is submitted in accordance with Commission on Human Rights resolution 1999/80 of 28 April 1999, in which the Commission, inter alia, welcomed the report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN 4/1999/71 and Add 1) and requested her to submit an interim report to the General Assembly at its fifty-fourth session (A/54/311) and a report to the Commission on Human Rights at its fifty-sixth session

The report details the working methods of the Special Rapporteur, particularly in respect to the eliciting of information from Governments, non-governmental organizations, United Nations agencies and other international bodies about the current focus of her mandate - the role of the family and the impact of domestic violence upon the child A circular letter requesting information in this regard was sent out in June 1999

An overview is provided of activities which the Special Rapporteur has carried out since the submission of her previous report to the Commission on Human Rights, including two country visits - to Guatemala in July 1999 on the issue of the sale of children, particularly for international adoption (see E/CN 4/2000/73/Add 2), and to Fiji in October 1999 on the issue of commercial sexual exploitation of children (see E/CN 4/2000/73/Add 3), as well as attendance at several conferences and meetings

Some international developments relating to the sale of children, child prostitution and child pornography are then described, including the convening of conferences related to the concerns of her mandate and the adoption of new legislation Country-specific developments in Albania, Bolivia, Cambodia, India, Japan, Sri Lanka, the United Kingdom of Great Britain and Northern Ireland and the United States of America are also discussed

The report then focuses upon domestic violence and its relationship to the concerns of the Special Rapporteur's mandate This chapter commences with an explanation as to the importance of considering the role of the family, then provides the legal framework for the protection of children from all types of violence The nature of abuse, the profile of perpetrators and the effects of domestic violence are considered in the light of information received from States, non-governmental organizations and United Nations bodies The report then provides a summary of some of the responses received from States, namely those of Benin, Canada, Colombia, Cyprus, Iraq, Japan, Qatar, the Slovak Republic, South Africa, Switzerland and Togo Information received from the Governments of Chile, Fiji, Guatemala, Mexico, Norway, Singapore, the United Kingdom and other States submitting their responses between December 1999 and July 2000 will be used in the forthcoming report of the Special Rapporteur to the General Assembly

Lastly, the Special Rapporteur sets out her conclusions and outlines several recommendations

Introduction

1. At its fifty-fifth session, in its resolution 1999/80 of 28 April 1999, the Commission on Human Rights welcomed the report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/1999/71 and Add.1). In the same resolution, the Special Rapporteur was requested to submit an interim report to the General Assembly at its fifty-fourth session (A/54/411) and a report to the Commission on Human Rights at its fifty-sixth session. The Commission also called upon States to cooperate closely with and assist the Special Rapporteur and to furnish all information requested, including by inviting her to visit their countries.

2. The Commission, furthermore, welcomed the United Nations Educational, Scientific and Cultural Organization expert meeting, held in Paris on 18 and 19 January 1999, entitled "Sexual Abuse of Children, Child Pornography and Paedophilia on the Internet: An International Challenge" and its declaration and action plan, and encouraged follow-up in cooperation with the Special Rapporteur.

3. In this connection, the present report, submitted in accordance with resolution 1999/80, contains a review of recent national and international developments and initiatives taken since the Special Rapporteur's report to the Commission on Human Rights at its fifty-fourth session.

I. WORKING METHODS AND ACTIVITIES

A. Working methods

4. In her previous reports, the Special Rapporteur has focused upon the three elements of her mandate, namely sale, prostitution and pornography as they pertain to commercial sexual exploitation. Very early on she identified three catalysts which she believes are both causative and preventive of commercial sexual exploitation, namely, the justice system, the media and education. The crucial role that these catalysts play has been validated throughout her research into these issues. It soon became apparent that the role of another, perhaps the most fundamental catalyst needed to be examined - the family. In a vast number of cases where a child has been exploited, the roots of this exploitation can be traced back to the familial situation.

5. In order to obtain a comparative overview of developments relating to domestic violence and commercial sexual exploitation, in June 1999 the Special Rapporteur sent a circular to all Governments, relevant United Nations bodies and agencies, and intergovernmental and non-governmental organizations, soliciting information to be used in her report to the Commission on Human Rights on the following:

(a) Studies that have been carried out in this regard, especially those considering the link between abuse and neglect in the home and subsequent entry into prostitution;

(b) How cases of abuse and neglect come to the attention of Governments, agencies and organizations;

(c) Where statistics are available regarding domestic violence and neglect:

(i) What are the types of relationships between the abuser and abused (i.e. husband/wife, parent/child, domestic partners, etc.)?

(ii) What is the frequency of the abuse?

(iii) What is the specific type or nature of abuse that the Government, organization, etc., has had experience of?

(d) Concerning the legal structure to deal with situations of abuse and neglect:

(i) Who can bring a complaint on behalf of the abused/neglected child?

(ii) Who has primary care of the child after a complaint has been filed?

(iii) What action is taken after cases of domestic violence are reported?

(iv) What legal or other resources are available to children who have been abused or neglected?

(e) Any national, regional and international initiatives that have been taken to reduce the incidence of domestic violence and neglect.

6. By December 1999, replies had been received from the Governments of the following countries: Benin, Canada, Chile, Columbia, Cyprus, Fiji, Guatemala, Iraq, Mexico, Norway, Qatar, Singapore, the Slovak Republic, South Africa, Switzerland, Turkey, Togo and the United Kingdom of Great Britain and Northern Ireland. Replies were received from the following non-governmental organizations: American Psychological Association, Amnesty International, Caribbean Child Development Centre - Jamaica, Ecumenical Network for Youth Action - Czech Republic, The Global Network to End Child Prostitution, Pornography and Trafficking (ECPAT), Focal Point on Sexual Exploitation, The Network against Sexual Exploitation of Children - S. Africa, Radda Barnen, Terre des Hommes, and from the following United Nations agencies and international bodies, the United Nations Children's Fund, the United Nations Development Programme, the United Nations Population Fund, the World Health Organization, the World Trade Organization and the European Union. Some of the information provided in those replies is included in the present report. The remaining information will be included in the forthcoming report of the Special Rapporteur to the General Assembly.

7. In follow-up to country missions that the Special Rapporteur has carried out, in July 1999 she wrote to the Governments of the Czech Republic, Kenya, the Lao People's Democratic Republic, Mexico, and the United States. In her letter she sought the cooperation of these Governments in assessing the response to the recommendations made in her reports on her missions to their countries, and expressed her interest in learning about developments and initiatives within the sphere of her mandate that had taken place or been enacted since her visit. By December 1999, only the Government of Mexico had responded to her request. She would

urge the remaining Governments to provide her with this information in order to enable her to include an accurate assessment of the impact of the missions in her forthcoming report to the General Assembly

8 The Special Rapporteur has not as yet addressed this request to the Governments of countries to which she carried out her more recent missions, namely, Belgium and the Netherlands (see E/CN 4/2000/73/Add 1), Guatemala (see E/CN 4/2000/73/Add 2) and Fiji (see E/CN 4/2000/73/Add 3) She would, however, appreciate receiving information about any notable developments that have occurred in the short period since these missions took place

B Activities

9 Since the fifty-fifth session of the Commission on Human Rights, the Special Rapporteur has carried out two field missions In July 1999, the Special Rapporteur visited Guatemala (Guatemala City, Tecum Uman, Escuintla and Coban) at the invitation of the Government The mission report is contained in document E/CN 4/2000/73/Add 2 In October 1999, the Special Rapporteur visited Fiji (Suva and Nadi) at the invitation of the Government The mission report is contained in document E/CN 4/2000/73/Add 3 The report on her visit to Belgium and the Netherlands, which took place in December 1998, is contained in document E/CN 4/2000/73/Add 1

10 The Special Rapporteur attended an expert meeting in Paris organized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) entitled "Sexual abuse of children, child pornography and paedophilia on the Internet an international challenge", on 18 and 19 January 1999 The meeting brought together some 400 participants, including NGOs, institutions and specialists tackling this phenomenon, in order to formulate a global plan of action against these crimes The meeting dealt initially with the traditional problem of sexual abuse of children and paedophilia, and then considered this in the context of the Internet under three themes - the promotion of the free flow of information in a manner which would not place children at greater risk of sexual exploitation, how to make the Internet safe for children to use, and the need for research, information-monitoring and sensitization of the public It will be recalled that the Special Rapporteur discussed extensively the possible dangers to children of the information highway in her report to the Commission on Human Rights in 1998 (E/CN 4/1998/101)

11 The participants at the conference put forward a declaration and an action plan which proposes certain measures for UNESCO and for Governments, international agencies, NGOs, industry, educators, parents, law enforcement agencies and the media Following the conference, UNESCO set up "Innocence in danger", an international Internet education and safety programme The programme has been designed to gather information and create networks among all relevant industries and community action groups to avoid duplication of efforts regarding Internet education for children and for adults

12 The Special Rapporteur welcomes the contribution that UNESCO is making towards the elaboration of strategies for the protection of children from abuse and exploitation through the Internet

13. In February 1999, following her attendance at this important gathering, the Special Rapporteur sent a circular letter to the conference participants requesting that she be informed of continuing developments globally concerning paedophilia and the Internet. She would like to take this opportunity to thank those who have responded to this request, and would reiterate her request for a continuing flow of such information, particularly with regard to the implementation of the UNESCO declaration and action plan.

14. The Special Rapporteur attended the eighth session of the Commission on Crime Prevention and Criminal Justice, held in Vienna from 27 April to 6 May 1999. During the debate on the prevention of crime and the treatment of offenders, the Special Rapporteur reiterated her advocacy for a more holistic treatment of juvenile justice so that whilst efforts continue to get State parties to implement international standards for the protection of children in conflict with the law effectively, similar standards should be developed for child victims seeking protection under the law. She emphasized the importance, both as a remedial and a preventive strategy, of such standards avoiding the revictimization of the child complainant in the judicial process.

15. The Special Rapporteur urged the Commission to include the issue of child pornography when it considers computer crimes at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in April 2000. She also invited the attention of the Commission to her consistent findings regarding the close linkage between children under her mandate and drug abuse. She recommended that the Office of Drug Control and Crime Prevention take this factor into account in its initiatives, including in-depth data-gathering and analysis of drug abuse by children, disaggregated by age, sex and other personal situations which might contribute to the vulnerability of children to such addiction.

16. The Special Rapporteur also invited the attention of the Commission to the ongoing working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. She stressed the need for coordination between the working group and the Ad Hoc Committee on the Elaboration of a Convention on Transnational Organized Crime (draft protocols against the smuggling of migrants and on trafficking in persons). The Special Rapporteur attended the fourth session of this Committee, which was held in Vienna from 28 June to 9 July 1999.

17. The Working Group on Contemporary Forms of Slavery, which held its twenty-fourth session in Geneva in June 1999, requested the Special Rapporteur, inter alia, "within the framework of her mandate, to continue to pay attention to issues relating to the traffic in children, such as organ transplantation". During her tenure as mandate holder, this Special Rapporteur has received a slight but steady flow of information alleging the existence of trafficking of children for the purposes of using their organs, but she has not received information which has enabled her to arrive at a firm conclusion that such a trade, operating at the magnitude and with the level of organization that the allegations have suggested, does in fact exist.

18. In August 1999, the Special Rapporteur contacted the World Health Organization, requesting a meeting with relevant medical personnel who would be in a position to advise her first-hand as to the medical feasibility of allegations of this nature. This meeting took place in September 1999.

19. The WHO representatives with whom the Special Rapporteur met advised her that, as its primary mandate of WHO is health, its role in the issue of transplant operations is to promote and monitor the access to health care of those who undergo such operations, particularly where the operation has taken place in a country other than that of the patient's normal residence. However, they shared her concerns that there could possibly be an element of criminal activity in the provision of organs, but had reached the same conclusion as to the difficulty of definitively stating that this is the case.

20. They advised her that the trafficking of, and operations involving, certain body parts was medically feasible, but that certain allegations, especially those concerning murder, the removal of major organs, the transport of such organs to other countries and the eventual use of organs in transplant operations, could not be treated as being very credible. They felt that, rather than focusing on ascertaining the truth of the allegations, a more appropriate stance would be to highlight the need for international legislation introducing a mandatory tracing system to which every organ used in a transplant operation would be subject. Such a system, by which donor, transporter and recipient would be identified, would close existing loopholes through which criminal groups may be operating.

21. The WHO representatives advised the Special Rapporteur that they would make further inquiries concerning these questions and promised to include this issue on the agenda of their forthcoming in-house discussions on child abuse. The Special Rapporteur warmly thanks the WHO representatives for meeting with her and for their concern in this regard. She looks forward to a continuing close collaboration.

22. The Special Rapporteur attended the second Support Group Consultation, organized by the Focal Point on Sexual Exploitation of Children, which was held in Geneva on 23 and 24 September 1999. The Support Group Consultation was part of a continuing process of assessing progress made in the follow-up to the World Congress on the Commercial Sexual Exploitation of Children, held in Stockholm in 1996, and focused on the issues of coordination and cooperation, identified earlier as areas where greater impetus is needed. The Special Rapporteur, in her opening remarks, addressed three challenges for those working for the protection of children from sexual exploitation. These were: the need for organizations to specialize and see themselves as a link in part of a bigger chain, rather than attempting to be the whole chain, by building up expertise and avoiding duplication of efforts; the need for clearer lines of coordination; and the involvement of the business sector.

23. On 9 and 10 September 1999, the Special Rapporteur attended the Asia and Pacific Forum of National Human Rights Institutions, held in Manila. The theme of the forum was "The role of national human rights institutions in the protection and promotion of the human rights of children". The forum emphasized the important role that national institutions can play in the

protection and promotion of human rights and reiterated that the rights of children should be a priority in the work of national institutions, as agreed at the World Summit for Children in 1990 and the World Conference on Human Rights in 1993.

24. The meeting was also attended by the Chairperson of the Committee on the Rights of the Child, the Chairperson of the Committee on Economic, Social and Cultural Rights and the Vice-Chairman of the Human Rights Committee.

25. During the meeting, the Special Rapporteur expressed her appreciation for the priority given by the Forum to children and emphasized the unique role that the national institutions can play, especially in influencing national Governments in the formulation of their policies and actions. They could also stimulate public debate on the subject of children's rights and the children's own reactions, thus giving these issues a more prominent place on the political agenda.

26. The Special Rapporteur addressed the 5th Global Consultation on Child Welfare Services, held in Zambales, the Philippines, from 20 to 22 October 1999, which addressed the problems of inter-country adoption.

II. INTERNATIONAL DEVELOPMENTS RELATING TO THE MANDATE

27. An NGO consultation entitled "Trafficking and the global sex industry: need for a human rights framework" was held in Geneva on 21 and 22 June 1999. The consultation was the joint initiative of four non-governmental organizations and brought together NGOs and representatives of United Nations bodies active in the fight against trafficking in persons and other relevant issues. The consultation recognized that although the crime of trafficking in persons involves trafficking in women, men and children, a distinction must be made between the adults and children because the legal status and needs of children differ significantly from those of adults. Although the consultation dealt primarily with the issue of trafficking of women for the purposes of sexual exploitation, the Special Rapporteur welcomes such initiatives, which serve to keep alive the public debate as to the best ways to combat this rapidly growing phenomenon which affects women and children equally.

28. The Special Rapporteur welcomes the adoption in June 1999 of International Labour Organization Convention No. 182, Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which includes the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances among these worst forms.[1]

29. A new Global Code of Ethics for Tourism was adopted on 1 October 1999 by the 106 member States of the World Tourism Organization that were represented at its 13th General Assembly in Santiago, Chile. The Global Code of Ethics for Tourism lays out a set of interdependent principles aimed at promoting an equitable, responsible and sustainable world tourism order.

30. A special provision concerning the fight against all forms of sexual exploitation of children in tourism is included in article 2, paragraph (3) of the Global Code which states:

> "The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism, as such, in accordance with international law, it should be energetically combated with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad."

31. From 29 September to 1 October 1999, experts and representatives of governments, the Internet industry, international organizations, telephone hotlines and NGOs from around the world met at the International Conference on Combating Child Pornography on the Internet, which was organized in Vienna by the Government of Austria.

32. Participants addressed, inter alia, methods to reinforce cooperation among law enforcement officials and the judiciary; the question of elaborating elements for codes of conduct for the Internet industry; how to make telephone reporting hotlines more effective and promote the establishment of further hotlines, and how to encourage networking. Participants agreed that a policy of zero tolerance with regard to child pornography must be pursued in all jurisdictions, which will require effective legislation and law enforcement. Participants also committed themselves to the strengthening of partnerships at national and international levels among governments, the Internet industry, hotlines and NGOs. In addition, the conference called for the worldwide criminalization of the production, distribution, export, import, transmission, intentional possession and advertisement of child pornography.[2]

III. COUNTRY-SPECIFIC DEVELOPMENTS

Albania

33. The Special Rapporteur welcomes the establishment, by the Children's Human Rights Centre of Albania, of the first counselling centre in the country for abused children. Prior to this, no institution existed which could offer counselling to abused children.

34. Albanian society has traditionally accepted the use of physical violence as being "in the best interest of the child". However, public awareness about the true nature of child abuse, particularly sex abuse, has been raised in Albania in recent years. The press has begun to report such incidents on a regular basis, and the Ministry of Public Order reported 300 cases of sexual abuse of children in 1998. Non-governmental sources believe that child abuse, still a very sensitive and hence under-reported problem, is widespread throughout Albania.[3]

35. The Special Rapporteur would recommend, in addition to the establishment of further counselling centres, the provision of child-sensitive training to members of the police, the judiciary and other professionals who come into contact with children through their work.

Bolivia

36. On 27 October 1999, the Bolivian Congress formally approved the Children and Adolescent's Code, which amends national legislation to bring it into line with the Convention on the Rights of the Child and the concept of comprehensive protection for boys and girls. The new Code will come into effect six months after being published in the official newspaper.

Cambodia

37. In Cambodia, the Government launched a five-year plan against child sexual exploitation and trafficking in July 1999. The plan, developed by the Cambodian National Council for Children, seeks to prevent trafficking and protect, recover and reintegrate child prostitutes. Under the plan, it is intended, among other things, to conduct a multimedia awareness campaign, a public awareness campaign and sensitivity training for the police, court officials and high-ranking officials, and to create a documentation centre, to accomplish these goals.

38. The Special Rapporteur welcomes the commitment of the Government of Cambodia in this regard, but at the same time would urge the Government to address the many allegations of collusion of members of the police and the judiciary with traffickers and brothel owners who are using children in prostitution. Non-governmental sources have reported that traffickers and brothel owners are wealthy and can usually avoid arrest through bribes. On the rare occasions when they are arrested, most are released very quickly after being sent for trial - often before the trial has even started.[4]

India

39. The Special Rapporteur is concerned about allegations of the sale of children in the Nalgonda district of Hyderabad in India. Reportedly, it has been an open secret for several years that baby girls can be bought and sold in certain parts of India.

40. The market for baby girls appears to have arisen out of the otherwise very welcome marked decrease in levels of infanticide practised against girl children in the past four or five years, following a great improvement in their social status. This has been attributed to the erosion of some aspects of tribal values which generated discrimination against girls.

41. Regrettably, the combination of extreme poverty and a lack of employment opportunities has meant that many mothers are still unable to provide for their baby daughters, even if the girls' lives are now better protected. Many such mothers have recognized that their daughters have become a marketable commodity for those who can afford such a purchase and are implicated as being partly responsible for generating this "trade".

42. Some reports put the number of babies taken from Hyderabad, 99 per cent of them girls, at about 300. According to reports received, 228 babies were discovered in March 1999 in Hyderabad in the custody of two non-governmental organizations whose founders were arrested for irregularities relating to the adoption of babies. Records of these organizations show that they sent out 156 children to various countries for adoption.

43. One representative of a non-governmental organization whose efforts to prevent the sale of babies resulted in the discovery of the 228 babies, reported that she had visited the Banjara tribal villages of the Nalgonda district to find out the truth concerning the babies' sale and had been deluged by offers from women of their infant daughters. The range of "bargaining" was from Rs.100 to Rs.10,000. In a one-hour period, as many as six women offered babies, allegedly their own, to her.

44. Police sources allege that there is a vast and efficient network which has been set up by some NGOs working in this area, which keeps track of pregnant women. Within days of a mother giving birth, representatives of the network arrive in her village and persuade her to sell her child, if it is female.

45. The Special Rapporteur would urge the Government of India to investigate the veracity of these allegations and take measures to monitor the situation of children being offered for international adoption.[5]

Japan

46. In July 1998, the Special Rapporteur, in a joint communication with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, wrote to the Government of Japan expressing their concerns over allegations as to the extensive proliferation of web pages, bulletin boards and news-servers in Japan distributing images of child pornography over the Internet.

47. In October 1999, the Government of Japan responded, advising the Special Rapporteurs about the measures that have been taken in Japan in this respect.

48. On 26 May 1999, the Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children was enacted in Japan. It was due to enter into force on 1 November 1999. It prescribes punishment for those who are involved in child prostitution, solicit child prostitution, induce a child to engage in prostitution, distribute child pornography and engage in trafficking of children for prostitution. It also has a provision to penalize Japanese citizens involved in child prostitution abroad.

49. The law provides that those who display child pornography on the Internet face imprisonment of up to three years. Measures to regulate the pornography industry operating through the Internet were introduced in an amendment to the Law on Control and Improvement of Amusement Business in October 1998.

50. When police investigators detect child pornography on the Internet, they ask Internet providers to delete the material from the network. A trade organization of Internet providers developed guidelines to curb illegal and harmful information, including child pornography, on the Internet, in February 1998. Under the guidelines, providers can take measures such as warning, deleting the material of, and suspending the service to, those who put illegal and harmful material on the Internet.

51. The Government of Japan also reported that it is taking measures to develop its services to child victims of sexual assault, particularly through the police provision of consultants and guidance officers for juveniles, trained in psychology, education and counselling of child victims.

52. The Special Rapporteur welcomes the measures that the Government of Japan has taken, and invites both the Government and non-governmental sources to provide her with an assessment of the impact of these measures.

Sri Lanka

53. In Sri Lanka, public and media discussions on the sexual abuse of children usually tend to focus principally on foreign paedophiles who prey on young male children. However, the number of reported cases of rape of girls under 16 years of age increased alarmingly in 1999, and in the previous year there had been more reported complaints of rape committed against children than committed against adult women.

54. Among the convictions reported in 1998, the alleged perpetrators included fathers, grandfathers, stepfathers and other male relatives, as well as school teachers, sports coaches, employees of children's homes and even a few monks. There were two unconnected cases of rape of disabled girls, for which the perpetrators were sentenced to 17 and 10 years' imprisonment, respectively, and the case of a youth of 18 sentenced to 12 years for the rape of a three-year-old.

55. The Special Rapporteur is disturbed to receive this information, particularly as the laws relating to rape were greatly strengthened by the Penal Code (Amendment) Act No. 22 of 1995 which, amongst other features, prescribed a minimum penalty of 10 years' imprisonment for the rape of a minor by an adult. It would appear that the deterrent factor of this legislation has not yet begun to operate. The Special Rapporteur would urge the Government of Sri Lanka to supplement the legislative measures it has taken in this regard by carrying out a public awareness-raising campaign about the nature of such crimes, and by ensuring that the sentences received by those convicted are well publicized.[6]

United Kingdom of Great Britain and Northern Ireland

56. In December 1998, the Home Office and Department of Health of the Government of the United Kingdom issued "Guidance on children involved in prostitution" for the police, social services and all other agencies that may deal with possibly affected children. Its aim is to ensure that such children are treated as victims of abuse, to safeguard and promote the welfare of all children and to encourage the investigation and prosecution of those who abuse children and coerce them into prostitution.

57. Although prostitution is not illegal in the United Kingdom, the selling and buying of sexual services in a public place are illegal and it is legally possible for a child over the age of 10 to be charged with one of these offences. The Government considers that decriminalizing prostitution for children would create an incentive for abusers to encourage children into prostitution.

58. The guidelines now instruct the relevant services to ensure that children actually involved, or at risk of becoming involved in prostitution, are treated as being children in need, who may be suffering, or may be likely to suffer, significant harm, in accordance with the provisions of the Children's Act 1989. The Special Rapporteur welcomes this initiative, but would urge further legislative changes to ensure that children under 18 who are involved in prostitution are statutorily protected from prosecution.

United States of America

59. In September 1999, two lawyers were indicted in an alleged immigration fraud scheme that arranged for Hungarian mothers to enter the United States illegally so they could give up their babies for adoption in exchange for money. The lawyers, who operated in Orange and in Vancouver, British Colombia, Canada, reportedly wrote letters of invitation to the women which enabled them to obtain visas to the United States. When that method did not work, the women were smuggled across the border from Canada. The new parents would pay all the costs related to bringing the women to the United States and for medical care during the pregnancies, as well as the lawyers' legal fees. The mothers were allegedly offered amounts ranging from $8,000 to $22,000 for a child.

60. The investigation which led to the arrests had involved the Federal Bureau of Investigation, the Inland Revenue Service, State Departments, the Border Patrol, the Hungarian National Police, the Royal Canadian Mounted Police and local police departments.[7]

IV. SPECIAL FOCUS ON DOMESTIC VIOLENCE

A. Introduction

61. The Convention on the Rights of the Child, in its preambular paragraphs, describes the family "as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children [which] should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community".

62. The Special Rapporteur would begin this discussion of the role of the family by asserting her very strong concurrence with this assessment, as well as her belief that the child who is able to grow and develop within a loving and functional family unit is given the best possible start in life and will be well equipped to deal with adult life.

63. However, the Special Rapporteur has chosen to focus upon the family in the context of her mandate, as she has particular concerns about the children for whom a loving and functional family has not been a reality.

64. When the Special Rapporteur was appointed in 1995, she began her study with a review of the diverse causes giving rise to the sale of children, child prostitution and child pornography (see A/50/456). Among these causes, several related to the familial situation, in particular the "erosion of the family structure, both nuclear and extended, resulting in the deprivation of one of the best stabilizing elements in the lives of children" (A/50/456, para. 27 (d)). She then considered which catalysts, or agents of change, could be utilized in instituting reforms

benefiting children. These were determined to be the justice system, (E/CN.4/1997/95), the education system and the media (E/CN.4/1998/101). As she continued to study these catalysts, the role of the family pervaded every aspect of her analysis and caused her to review almost every conclusion. For example, how can one recommend measures to keep the child from having to face the perpetrator of his abuse in the courtroom, when that person is his own father? To what extent should sex education for children also be offered to their parents? Would the best method of protecting children from harmful or obscene material on the Internet be simply the presence of a parent while the child uses the computer?

65. Of course, being part of a loving and secure family does not ensure any child's safety. It is not necessary to look beyond the events in Belgium in recent years, where several children were kidnapped by strangers close to their homes, raped and murdered (see E/CN.4/2000/73/Add.1). However, for the large number of children who are sexually abused, or who enter into commercial sexual exploitation, her research has led the Special Rapporteur to conclude that the cause is directly linked, or can be traced back, to the child's familial situation.

66. Traditionally, domestic violence has been studied with respect to physical violence committed by men against their wives or girlfriends. The Special Rapporteur on violence against women addressed the issue of violence in the family as it pertains to her mandate in her report to the Commission on Human Rights last year (E/CN.4/1999/68). The attention that is being focused upon this aspect of the problem at both the national and international levels is very welcome and this Special Rapporteur would now encourage attention also being focused upon the situation of children who are caught up in familial violence. The traditional approach has not generally addressed children, and where it has, the word "child" more often than not has referred to the girl child. This is particularly significant considering the extent to which boys are reportedly at risk of abuse from members of their own family.

B. Legal framework

67. Article 19 of the Convention on the Rights of the Child accords the child the right to be protected from domestic violence:

> "1. States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

68. It might be argued that, in order for an action to qualify as "violence", some form of aggressive physical contact is necessary. However, the Special Rapporteur would use all the elements of article 19.1 for her working definition of domestic violence.[8]

69. Article 19 of the Convention continues:

> "2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for

identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

70. Article 19 seeks to accord children the broadest possible range of protection against any kind of domestic or other violence. It deals specifically with the duty of Governments to protect children against neglect and abuse by parents or other persons who care for them. This duty takes on added significance because its violation often deprives the child of access to help, and the mistreatment or abuse may then continue undetected for long periods of time.

71. The Special Rapporteur would suggest that through this article the Convention on the Rights of the Child extends the following protection to children:

(i) Against physical violence - physical abuse is the actual or attempted use of any physical force with the intent to injure, control, hurt or make the victim afraid of the abuser. This would include slapping, punching, kicking, etc.

(ii) Against mental violence - which would include psychological, emotional and verbal abuse intended to undermine the victim's self-esteem and self-confidence. This is usually expressed through words and actions aimed at instilling fear and submission.

(iii) Against neglect - which would refer to acts of omission rather than acts of commission. Failure to see to the basic needs of the child, like the needs for food, clothing and medicine, would be violative of this provision of the Convention.

(iv) Against maltreatment - which would refer to acts which may not be characterized by physical contact between abuser and victim, but is nevertheless just as harmful, like making a child do something which is extremely difficult or painful, such as work too heavy for the age and/or physical condition of the child.

(v) Against exploitation, including sexual abuse - which includes all kinds of sex, even just touching in a sexual way, and even if there is no violence. Watching pornography together with children, watching children do something sexual with each other, taking photos of their bodies or just looking at their bodies in a sexual way are also forms of sexual abuse or exploitation.

C. The nature of abuse

72. A large percentage of the responses received directed the Special Rapporteur's attention to two main areas - physical and sexual violence. The responses described violent offences to which, it was reported, children in virtually all parts of the world had been subject within the home environment - battering, torture, mutilation and murder. Sexual violence was usually considered in terms of incest, and the Special Rapporteur would adopt a definition of incest that takes into consideration the betrayal of trust and the power imbalance in one-sided relationships. One such definition is: "the imposition of sexually inappropriate acts, or acts with sexual overtones ... by one or more persons who derive authority through ongoing emotional bonding

with that child".[9] This definition expands the traditional definition of incest to include sexual abuse by anyone who has authority or power over the child. Unfortunately, few of the responses referred to situations of emotional neglect and cruelty.

73. In March 1998, the Special Rapporteur attended the International Summit of Sexually Exploited Youth, held in Victoria, British Colombia, Canada and had a unique opportunity to meet many young people who had been victims of commercial sexual exploitation. The story that one young Canadian woman shared with her is a particularly poignant example of how experiences in the child's formative years can set the pattern for the child's adult life. Shortly after her birth her parents divorced and her mother remarried an extremely wealthy man, who was not interested in having a step-daughter. Other children were born, but the oldest daughter was never treated as part of the new family. Even her mother made her feel that she had been an unwanted mistake. She told the Special Rapporteur that she had every toy imaginable, a large bedroom with her own television, but has no memory of ever sitting on her mother's lap. By the time she was 14, she was hanging out in bars every night as an alternative to returning to a loveless environment. Her self-esteem was virtually non-existent, so when an older man told her that she had beautiful eyes, the first compliment she ever remembers receiving, she asked him to take her home with him and quickly entered into a sexual relationship with him. She would do anything to ensure his continuing "love", as she perceived it to be, and did not take much persuading when he asked her to earn money for him by prostituting herself to the men that he would bring to their house.

74. This young woman had never been the victim of physical or sexual violence within her family, but has no doubts that her entry into almost five years of prostitution resulted from the emotional cruelty she endured at the hands of her parents. Clearly, the consideration of domestic violence in the context of the child must extend beyond physical and sexual abuse, to encompass neglect of the child's emotional needs.

75. For this reason, the Special Rapporteur, in her circular letter, requested information about the specific type or nature of abuse that children suffered in the home.

76. The Government of Benin reported that the most frequent forms of domestic violence are committed against women and children, and are physical, psychological and verbal in nature.

77. In Norway, a study carried out in 1998 by Pro Centre - a national resource centre and social initiative for men and women in prostitution - examined the entry of 10 young girls into prostitution. This had occurred when all of them were under 16 and the study found that eight of them had had a traumatic childhood, with broken homes, neglect, violence, alcohol abuse, uncertainty and betrayal. Some were sexually abused. On average, they had their first experience with drugs at age 12, first sex at 13, prostitution debut at 14. Some explained that their entry into prostitution had been a cry for help, a "solution" to a difficult childhood, a wish for love, to be seen and acknowledged.

78. The Government of South Africa reported that the different forms of child abuse - sexual, physical, emotional or commercial - should not be separated when devising national intervention

strategies and policies to respond to violence against and exploitation of children, as practice indicates that abuse seldom occurs in one form alone; rather, instances of child abuse usually include a combination of the different forms of abuse.

79. The Special Rapporteur would agree with this conclusion, to the extent that in most cases children suffer more than one type of abuse. However, she considers that varying catalysts trigger the occurrence of different types of abuse, and as such the different catalysts would need a different response. For example, the Special Rapporteur on violence against women describes domestic violence as existing as a powerful tool of oppression, serving to sustain dominant gender stereotypes.[10] Where incest is committed against children, it is often considered as resulting from a belief that children are the "property" of their parents, to be used in any way they choose. This belief is often reinforced by the attitudes of law enforcement officers. However, a study in Bangladesh[11] found many adults consider that domestic sexual abuse of children is a natural part of their growing up, and in the example with which the Special Rapporteur began her discussion, the parents of the Canadian girl appeared to be simply uninterested in her.

80. All abuse is further compounded when it is kept secret. Family violence and abuse has remained largely a taboo subject, even when States are starting to admit that commercial sexual exploitation of children takes place on their territory. Particulary where the abuse is of a sexual nature, the family often tries to forget such experience, deny it and suppress it by behaving purposefully "as if nothing happened", refusing any interference from outside.

D. A profile of the perpetrators

81. The Special Rapporteur was interested in examining the widely-held belief that the vast majority of violence and sexual abuse in the home is committed by fathers and step-fathers. As violence is believed to be a perverted exercise of power over somebody perceived to be more vulnerable, it follows that children might be as vulnerable to physical attack from their mother as from their father. In order to test this hypothesis, the Special Rapporteur requested information as to the identity of the abusers and their relationship to the abused. She was also keen to look beyond the traditional definition of domestic violence as meaning "family violence" in order to include the substantial incidences of abuse within a "home" committed by unrelated individuals.

82. In the event, she received information about abuse committed by men against their wives/girlfriends and their children, by women against their husbands/boyfriends and their children, by grand-parents, by step-fathers, by step-mothers, by brothers, by brother-in-laws, by employers (and their sons) of domestic servants, by other members of the extended family, by neighbours, by babysitters, by schoolteachers, by priests/ministers, and by scoutmasters. Information was also received about violent acts committed by children against family members.

83. The information she received will be considered under the following headings: (i) abuse by parents; (ii) abuse by other family members; (iii) abuse in the home by non-family members, (iv) abuse between adult family members.

1. Abuse by parents

84. The Government of Colombia reported that although a specific and well-defined study on this matter had not yet been carried out, it had been established, through examining care provided in centres in various zones, that in the great majority of cases of abuse of minors dealt with by the Colombian Family Welfare Institute, the abuse is inflicted on the children by the adults responsible for them (stepfather, father, mother, etc.). Of 323,286 cases of abuse dealt with in the Institute's centres in various zones, 68,712 were due to family conflict. A study entitled "Measurement of the frequency of child abuse and of the level of positive stimulus amongst children", which was commissioned by the Welfare Institute and carried out in 1998, discovered that 91 per cent of the adolescents interviewed felt they had suffered some form of abuse at some stage from their mother, 21 per cent of the young people said they had experienced physical abuse at their mother's hand; while 15 per cent claimed to have endured emotional neglect. According to this study, one fifth of young people have no contact with their biological father, 87 per cent feel they have suffered some form of abuse from their father, 25 per cent of adolescents state that they have undergone emotional neglect on their father's part and 14 per cent have been subjected to physical abuse.

85. Useful statistics were provided in the response of the Government of the Slovak Republic, which has established a children's telephone hotline for reporting instances of abuse, inter alia. In the period January-June 1999, the Hotline received 10,841 calls, 222 of which were about neglect, violence and sexual abuse of children in families. Of these 222 calls, 51 complained of abuse committed by a father against a daughter, 32 by a father against a son, 19 of a mother against a daughter and 23 of a mother against a son. Five cases concerned abuse by a step-father against a daughter, and three by a step-father against a son. The largest number of callers were in the age group 11 to 18: 168 callers. Callers aged between 7 and 10 numbered 20, and over 18 numbered 8.

86. Research by the Family Court of Australia into allegations of child sex abuse has found that where this is committed by parents, it is the father who is largely responsible. However, children are at risk of physical or emotional violence from their mothers.[12]

87. Violence by a stranger with respect to children is of itself already a contemptible and deplorable act. But when violence is committed against children by the parents, not only does it cause physical, mental or psychological harm to the child, it also deprives the child of his or her haven in the world where he or she should feel safest, as the personalities of protector and abuser are merged in the person of their parents and/or guardians.

88. There are many unexplored areas with respect to domestic violence committed by parents and its impact on children. For many countries, questions about the admission of corporal punishment by parents of their children remain and the line between violence and discipline may be extremely thin. To what extent should cultural practices in this regard be given consideration? Other unanswered questions revolve around the culpability of the parent or caregiver who fails to report the abuse, especially where he or she may also be a victim.

2. Abuse by other family members

89. In many societies, the increase in the divorce rate is placing more children at greater risk. If the mother remarries, several surveys have pointed to the greater risk that stepdaughters face of sexual abuse by their stepfathers than do daughters reared by their biological fathers. Some researchers have pointed out that a growing number of stepfathers are really "smart pedophiles", men who marry divorced or single women with families as a way of getting close to children.

90. Often the extended family provides a network of support, but this can be a double-edged sword in that it also opens wider the door of entry into the familial circle for abusers. The study in Bangladesh found that the most cited example of tolerance of sexual abuse was that committed by a young girl's brother-in-law, in that he often has virtually complete freedom to abuse his wife's sisters. Grandfathers and uncles were also cited as being responsible for sexual abuse, but the Special Rapporteur received little indication to suggest that members of the extended family commit acts of physical violence against children on a regular basis.

3. Abuse in the home by non-family members

91. The NGO Radda Barnen reported that most cases of sexual abuse of girls in Ethiopia occur at home and are committed by persons who are close to the family, such as neighbours or friends or siblings. They felt that the extent of the problem was huge compared to the rate of reporting of such offences. This was put down to the very discouraging legal process, from the medical examination that the victim has to endure, to court proceedings which are rarely sympathetic to the victim.

92. Another area of concern reported by Radda Barnen in the context of Ethiopia was that of domestic violence and sexual abuse of the domestic servant. This concern was also raised by the Government of South Africa who reported that the extensive and highly exploitative system of domestic workers provides hidden opportunities for sex services, either forced or paid.

93. The Special Rapporteur expressed her concerns in this regard in her recent report to the General Assembly,[13] following reports that had been made to the Working Group on Contemporary Forms of Slavery in June 1999.[14] In particular, girls working in domestic service in embassies suffer an alarming incidence of abuse and usually have no means of redress as their employers generally have diplomatic status.

94. Information received from Covenant House/Casa Alianza alleged that most of the domestic servants in Kathmandu, Nepal are subjected to severe sexual harassment, both verbal and physical, in their employers' residence. Furthermore, there are allegations that teenaged girl domestic servants are prostituted by their employers and are "sold" by them for the purposes of marriage. Once the purported "marriage" has taken place, they are sexually abused by the new "husband", then his friends, and are eventually forced into prostitution.

4. Abuse between adult family members

95. Studies carried out in the United Kingdom, Canada and the United States have found that domestic violence occurs in 25 to 28 per cent of marriages, and that the children of those

marriages are as much as 15 times more likely to also become the victims of one or both of their parents' abuse.[15] In studies conducted in Australia,[16] 45 per cent of 116 mothers whose children were registered as child abuse victims had a medical history indicative of assaults by their partners, and in a national survey of over 6,000 families in the United States, 50 per cent of the men who frequently assaulted their wives also frequently abused their children.

96. Clearly, it can be concluded that where physical violence is present between spouses, the child is at greater risk of being a victim, but the research has furthermore indicated that the effects on children of witnessing violence between their parents can be serious and long-lasting.

97. Child welfare statistics in Norway use categories such as neglect and physical abuse, and the Government of Norway reported that some children who had witnessed domestic violence could be categorized as having been mentally abused.

98. An additional consequence of domestic violence between spouses is when one parent, usually the mother, leaves home as a result of the violence, and takes the children with her. The Government of Norway reported that, in 1998, approximately 43 per cent (1,656 out of 3,888) of persons living in crisis shelters for battered women were children. Similar figures were reported by the Canadian Centre for Justice Statistics, which claimed that in a survey carried out in April 1998, there were 6,115 residents in 422 shelters, 48 per cent were women and 52 per cent were dependent children. Almost three quarters of these children were under 10 years old. Of those women who reported having children, 76 per cent brought them with them. Almost 30 per cent of women living in shelters for reasons of abuse reported that they were also protecting their children from abuse: 28 per cent from psychological abuse, 14 per cent from physical assault, 13 per cent from threats, 9 per cent from neglect and 4 per cent from sexual assault.

E. The effects of domestic violence

99. Most of the responses indicated that no formal studies had been carried out concerning the link between domestic violence and subsequent commercial sexual exploitation. However, almost all the responses indicated an undeniable link in this regard and alluded to many other repercussions.

100. The impact of family violence can be measured in terms of physical injury, ranging from minor to serious and in some cases even resulting in the death of individual family members, or psychological damage. Children who witness violence at home display emotional and behavioural disturbance as diverse as withdrawal, low self-esteem, nightmares, self-blame and aggression against peers, family members and property.[17]

101. Sometimes this damage is present for the rest of the individual's life. Approximately 40 per cent of all survivors of domestic violence suffer after-effects serious enough to require therapy in adulthood.[18] After-effects can include inability to trust (which effects the therapeutic relationship), fear of intimacy, depression, suicidal tendencies and other self-destructive behaviours, and low self-esteem, guilt, anger, isolation and alienation from others, drug and alcohol dependency, and eating disorders.

102. Men who have witnessed their parents' domestic violence are three times more likely to abuse their own wives than children of non-violent parents, with the sons of the most violent parents being 1,000 times more likely to become wife beaters.[19] Women who were raised in similar circumstances are twice as likely to be victims of spousal violence.[20]

103. Many studies demonstrate the contribution of domestic violence to homelessness, particularly among families with children. A 1990 Ford Foundation study found that 50 per cent of homeless women and children were fleeing abuse.[21] More recently, in a study of 777 homeless parents (the majority of whom were mothers) in ten cities in the United States, 22 per cent said they had left their last place of residence because of domestic violence. In addition, 46 per cent of cities surveyed by the U.S. Conference of Mayors identified domestic violence as a primary cause of homelessness. Although poverty renders children vulnerable to exploitation and abuse, homeless children are even more vulnerable in this regard.

104. Data collected by the Lithuanian Ministry of the Interior on approximately 50 illegal commercial sex firms found that the vast majority of the children involved had come from families where they had experienced neglect and abuse, and were pushed into vagrancy and begging.

105. The Government of South Africa considered that violence within families has serious implications for the stability of society, in that it prevents individuals from reaching their full potential and jeopardizes the development of communities. Ultimately, domestic violence is a stumbling block for the building of the nation.

106. Although it would appear that for many children involved in prostitution or delinquency, or who are mentally unstable, the root causes can be traced back to their family environment, it is important to recognize the resilience of most children who do suffer one or several types of abuse at one period in their childhood, yet grow into mature, responsible and caring individuals. Such children and young adults often become the very best advocates for child rights. In particular, the Special Rapporteur would express her praise and admiration for the young delegates of the Canadian and Australian conferences that she attended in 1998,[22] who shared often shocking stories of tragic childhoods, yet had overcome a history of violence and abuse and were now using their personal experiences to raise public awareness about the issues involved and to call for changes in legislation and policy.

V. STATE PARTY RESPONSES

107. Information received from Chile, Fiji, Guatemala, Mexico, Norway, Singapore, Turkey, the United Kingdom and other States submitting their responses between December 1999 and July 2000 will be used in the forthcoming report of the Special Rapporteur to the General Assembly.

Benin

108. Some aspects of the problem of domestic violence have been tackled through the National Programme against AIDS. In 1998, child prostitution became the subject of a thesis in

the National School for Social Assistance of the Faculty of Science and Health in Cotonou. The Ministry of Foreign Affairs and Cooperation expressed a desire to carry out further studies in this regard, but is currently hindered by financial constraints.

109. Benin reported a reduction in the phenomenon of maltreated and abandoned children following the elaboration of a project by the Ministry, financed by UNICEF, called "Vidomegon", which provides assistance to children in prostitution, whether still living with their families or otherwise. Concerning prostitution, the activities of pimps and recruiters have been hampered by efforts of the Government, working with NGOs and religious authorities and using various media, to sensitize the population as to the risks to children. Parents have become more vigilant with respect to their children's outdoor activities.

Canada

110. In 1984, the Federal Government appointed the Committee on Sexual Offences against Children and Youth (the Badgley Committee) to explore legal sanctions pertaining to child sexual abuse and to make recommendations aimed at protecting children at risk. Its report (the Badgley report, 1984) expressed concern at the relationship between sexual abuse and involvement in prostitution. It contained several findings and conclusions following interviews with 229 "juvenile prostitutes". For many of them, the choice to run away from home and their subsequent entry into prostitution were precipitated by a home situation they described as intolerable. The Badgley Committee also determined that many males involved in prostitution ran away from home because they were ridiculed and ostracized for their homosexual preferences. With little support from family members and a homophobic school environment, many young males turned to the streets where they believed they could meet people of the same sexual preferences and where they could escape from the hostility and derision of family and friends.

111. Since the Badgely report, some researchers have concluded that there is a clear link between intrafamilial physical and sexual abuse while growing up and subsequent entry into prostitution, but other researchers have questioned this link.

Colombia

112. Two national research projects have been undertaken on the subject of child prostitution and child pornography, their causes, ramifications and adverse consequences for children in general, and regarding direct intervention through the various intersectoral services provided by the State. The Colombian Family Welfare Institute (ICBF), which administers the national family welfare system and executes social policy for children and the family in Colombia, handles cases of intra-familial violence, including physical child abuse on a severe, acute or moderate level, as well as cases of emotional and verbal abuse, of sexual abuse, of physical and emotional neglect and of children being abandoned. It works in close coordination with other agencies and refers cases to them according to the level of complexity and need for expert knowledge.

113. Once a complaint has been filed, ICBF, through its defensor de familia, orders an inquiry to establish the facts, during which the child may remain in the parents' care. In such cases, a

house visit is conducted, those responsible for caring for the child are questioned and, if possible, the child is interviewed, a medical examination takes place and a psychological and nutritional assessment is made. Other steps may be taken as required.

114. When referred to the defensor de familia by an authority such as the police, the minor is placed under ICBF protection while the inquiry is carried out. Once the circumstances of the abuse have been clarified and throughout the proceedings the child will be kept under the full protection of ICBF to make sure that there is no further abuse.[23]

115. The Government has drawn up and is carrying out a plan entitled "Make peace" to prevent intra-familial violence, the three strategies it outlines focusing primarily on early detection, prevention and care in such cases. The plan includes activities at the national, regional and local levels and was developed essentially out of programmes and activities run by ICBF with the support of the Office of the President of the Republic.

Cyprus

116. The Department of Social Welfare Service is responsible for child and family policies, legislation and programmes. Domestic violence and neglect are among the most common issues dealt with. Owing to the small size of the island, referrals of cases of abuse are often made informally through neighbours, relatives and friends of the families concerned, at which point a welfare officer will investigate the case. There are also formal agreements between the Department of Social Welfare Services and other involved services, such as the police and the Ministry of Health, which determine the role of each professional and the procedures in cases of family violence.

117. A child assessed as being "in need of care" (The Children Law, cap. 352) may be placed with a foster family. Occasionally the child may be placed in residential care. However, this is viewed as a last resort if other services provided to families do not achieve the goal of supporting the family sufficiently to eliminate all abusive elements. The Association for the Prevention and Treatment of Family Violence, an NGO, specializes in support services for victims of family violence. These services include protection in a shelter, counselling services and legal advice.

Iraq

118. The Government of Iraq reports that it has taken every possible measure at the legislative, executive and judicial levels to ensure the protection and care of the child and that Iraqi society is free from phenomena such as domestic violence, sale of children and their involvement in prostitution and pornography, since the source of Iraq's national legislation is the Islamic shariah, which strongly rejects such practices. Iraq's national legislation, for example the Penal Code (Act No. 111 of 1969) and the Prevention of Prostitution Act No. 8 of 1988 prescribe severe penalties for anyone who engages in such practices, including sexual abuse.

Japan

119. The Government of Japan reported a growing awareness in Japanese society about child abuse, and an interest in measures to improve the protection of children. It was reported that

in 1998, out of 16,482 reported cases involving infringement of human rights in Japan, those involving abuse, exploitation, coercion and oppression of children by their parents amounted to over 1,000. The Government of Japan provided the Special Rapporteur with statistics relating to abuse against children. They were compiled by the Child Guidance Centre, which is mandated by the Child Welfare Law to investigate cases in which a child is under the "inappropriate custody of a guardian". In 1997, 5,352 cases were brought to the attention of the centre, of which 94.9 per cent involved abuse committed against the child by a family member. The type of abuse was broken down as follows: physical abuse - 51.9 per cent, neglect/lack of care - 33.7 per cent, psychological abuse - 8.6 per cent and sexual abuse - 5.8 per cent. The abusers were listed as: father - 27 per cent, stepfather - 9.1 per cent, mother - 55 per cent, stepmother - 3.8 per cent.

Qatar

120. The Government of Qatar informed the Special Rapporteur that cases of sexual exploitation of children and domestic violence did not exist in Qatar.

Slovak Republic

121. The Slovak Police Corps has dedicated units that deal with cases of neglect of children and family violence, and special investigators for crimes committed by and against juveniles. The Slovak Republic has a children's telephone hotline, which it has found useful in gathering statistics on the abuse of children.

122. The hotline was introduced in January 1999. It provides a free, non-stop and anonymous service to children and juveniles, giving them an opportunity to communicate their problems to trained counsellors in a position to listen to and advise them. The service is directly involved in addressing specific cases reported by children or on their behalf. The person making the call is given the opportunity to relate his or her experience, to be provided with information as to measures which could be taken and to be advised as to whom he or she may contact to resolve the problem from a legal point of view.

South Africa

123. An NGO, Child Abuse Treatment and Training Services (CATTS) deals with young girls living on the streets in Johannesburg. These girls have come from all the provinces in South Africa and also from Rwanda, Mozambique and Botswana. Most of the girls who benefit from the services of CATTS come from a family background where physical abuse, sexual abuse, domestic violence, political violence, unemployment and poverty are evident. At a youth workshop held in March 1999, prior to the national Conference against Sexual Exploitation of Children in South Africa, one of the resolutions adopted by the young participants urged parents to listen to their children. The young people felt that the gap in communication between parents and children leads to a rapid decline in the morals of a society. Young boys are brought up to believe they are superior to females, which leads to inequality within society, and within the Xhosa culture it is acceptable for a man to hit a woman because it displays his love for her. The young people stated that the only way to change such practices is to start at home.

124. In the White Paper for Social Welfare (1997), the Government committed itself to developing a comprehensive national plan for the protection of children against violence and abuse through inter alia research into needs and problems pertaining to violence and child abuse, including family violence, debriefing programmes for victims of violence, outlawing of corporal punishment, reform of the legal system to create a child friendly service, and the launching of public awareness campaigns.

125. In recognition of the high incidence of domestic violence in South Africa, the Domestic Violence Act (Act No. 116 of 1998) has been promulgated by Parliament and it is intended to begin implementing it early in 2000.

126. The Government of South Africa reported that commercial sexual exploitation of children is increasing in certain areas in South Africa. Domestic violence surely plays an added role in this situation. However, it should be emphasized that domestic violence can only be seen as a contributory factor with regard to the exploitation of children.

Switzerland

127. The first research on commercial sexual exploitation of children in Switzerland was carried out in 1999 by an NGO, Arge Kipro. However, this was based on 60 case studies and the Government of Switzerland does not feel that it is representative of the situation in Switzerland. Despite this assessment, the research demonstrated a clear relationship between commercial sexual exploitation and a childhood of violence and sexual abuse in the family. The Government noted a very clear link between prostitution and drug addiction. Various initiatives have been enacted in the cantons of Switzerland. For example the canton of Vaud has nominated a cantonal delegate as a focal point for the prevention of ill-treatment of children.

128. The Swiss response also referred to the situation of sexual abuse of children in a sporting environment, namely, abuse of children by sports coaches. The Federal School of Sport of Macolin and the Olympic Sports Association have established a working group to examine possibilities for training and intervention in this respect and the ways in which to inform the public about help and consultation centres.

Togo

129. Within the Ministry of Social Affairs, the Office for the Protection and the Promotion of the Family and the Child deals with cases of child abuse, and reported that in the period January-July 1999 it received 30 cases of ill-treatment of children by their parents. This ill-treatment took the form of verbal, moral and physical violence. More specifically, it was described as battering, sexual abuse, inflicting burns, cutting ears, traumatizing and abandoning the child, torture, rape and use in prostitution.

130. In cases involving violence within the family or abandonment of the child, the social services try to reconcile the family over a period of time. However, they consider that where incest is involved, it is much harder to achieve reconciliation, as the daughter usually rejects her father and the father usually denies the abuse.

131. Where the abuse has been particularly severe, the social services work with the NGO Terre des Hommes and place the child temporarily in an institution until a suitable guardian can be identified. The child would be given medical and psychological treatment.

VI. CONCLUSIONS AND RECOMMENDATIONS

132. The family is normally considered to be the safety net that provides a caring, nurturing and protective atmosphere allowing children to develop into well-rounded adults, able to realize their full potential. Traditionally, it is the most stable social bond, strengthening and empowering the individual members and providing them with a feeling of security not found anywhere else.

133. However, pressures brought about by modern living and negative developments all over the world have made it more and more difficult for the family to sustain this bond. The constant struggle of everyday life, the compulsion for more and more material goods, radical changes in moral values, family breakdown, rearrangement of priorities and other factors have proven damaging to the family unit.

134. The Special Rapporteur would like to express her appreciation of the European Family Forum, held in May 1998 in Athens under the auspices of the Foundation for the Child and the Family, entitled "Family- Europe - 21st Century Vision and Institutions". She realizes that paying attention to the family in dealing with children who are threatened or ensnared in trafficking and commercial sexual exploitation is long overdue.

135. Violence in the intra-familial context is very complex and quite often cannot be pigeonholed as one type alone. Thus, sexual violence is very seldom "just" sexual violence, it is often coupled with physical, psychological or mental abuse, and can lead to what some experts refer to as the spiral of violence, which characteristically escalates in gravity and nature. The impact of the abuse is compounded by the victims' lack of power and emotional relationship with the abuser.

136. It is not easy to estimate the magnitude of the problem of family violence, owing to several factors. Among these factors are:

(i) The varying standards and norms as to what constitutes "domestic violence" in different countries, including those countries where such a term simply does not exist;

(ii) The different cultural, religious and traditional values and practices in countries with respect to the treatment of women and children, in particular, and the family, in general;

(iii) The failure of reporting mechanisms, either as a result of the stoic acceptance by the victim of abuse that is considered as inevitable, or because systems of law enforcement consider it beyond their jurisdiction, being purely a domestic matter,

(iv) The general assumption that children who have a family are cared for and protected.

137. After comparing the various forms of family violence the Special Rapporteur has noted certain factors linked to the abuse of children within the family. These factors are:

(i) A perception of power over the victim;

(ii) A desire to compensate for low self-esteem;

(iii) Depression due to frustration and a general feeling of incompetence;

(iv) A preconditioned attitude caused by a background of family abuse;

(v) Drug, alcohol, substance and gambling addiction;

(vi) Cultural influence;

(vii) A lack of awareness about the rights of children;

(viii) Conjugal difficulties.

138. The responses received indicate some disagreement as to whether there is an undisputed link between familial abuse and prostitution. Nevertheless, the Special Rapporteur considers that it is possible to identify a general pattern relating to how many young people enter prostitution: a large number of them have run away from, or have been thrown out of, intolerable home environments where there may have been physical, sexual and emotional abuse.

139. Many males run away to escape discrimination based on their sexual orientation. Once living on the streets, poverty and inadequate services make prostitution a viable alternative for such youth.

140. Not every young person in prostitution experienced physical and sexual abuse while growing up, and not every sexually abused young person becomes involved in prostitution. However, the evidence suggests an association, rather than a direct causal link, between childhood physical and sexual abuse, running away from home and subsequent involvement in prostitution.

141. The Special Rapporteur would like to make the following general recommendations:

(a) There is an urgent need for intensive campaigns to educate the public on the rights of children under the Convention on the Rights of the Child, particularly article 19. Public awareness must be raised as to the harm that non-physical abuse also can do to a child.

(b) Sex education in schools should teach children not only to understand their bodies and their sexual development, but also that they have ownership over their bodies and that not

even close family members can touch them in certain ways. Issues relating to sexual behaviour must not be placed under a taboo and should be discussed with children in ways that they can understand and which do not threaten them.

(c) Studies must take into account differences in culture, attitude, and social and moral norms so that pertinent strategies can be conceptualized. However, such norms must never be accepted as an excuse for violent and abusive behaviour.

(d) In the conceptualization of programmes, initiatives and strategies, professionals from a range of disciplines must be involved, in order to ensure that the family unit is empowered to be the primary caretaker of children. Support networks within communities should be strengthened to enable communities to provide support to children, young people and families, and to address the risk factors within the family.

(e) Psychotherapy offered to sexually abused children should also be offered to their families and requires adequate professional skills on the part of therapists.

(f) The situation of the rights and responsibilities of members of the extended family must be examined, particularly those of step-parents. In most societies, there is no clear role assigned to the step-parent.

(g) It is urgent that the issue of domestic violence be brought out into the open and be the subject of thorough study and research, with a view to establishing the root causes of deviant behaviour within the family.

(h) Forums which provide an opportunity for children's voices to be heard should be encouraged. Often it is the very young people who have suffered abuse who are the best advocates for other child victims.

(i) Both State and non-State entities should continue to carry out research into the factors that precede youth involvement in prostitution. Knowledge about the process of entering prostitution is important for policy makers who develop strategies to reduce youth involvement in prostitution. Research should be conducted from the perspectives of youth involved in prostitution.

(j) States that have not done so should consider introducing telephone hotlines through which children can report abuse and speak to a trained counsellor.

Notes

[1] Article 3 (b).

[2] For further information about the proceedings, conclusions and recommendations of the conference, please see its Web site: www.stop-childpornog.at.

[3] Save the Children Albania, "Children's situation in Albania". Information provided by the Children's Human Rights Centre of Albania (CRCA) (www.crca.tsx.org).

[4] Redd Barna Cambodia, info.rbc@bigpond.com.kh.

[5] R. Akhileswari, Deccan Herald News Service, Hyderabad, India, 31 March 1999.

[6] Nayana, "Abuse of the girl child", Legal Watch, The Sunday Island, Sri Lanka, 9 May 1999.

[7] David Rosenzweig, "2 lawyers accused of immigrant fraud", Los Angeles Times, 24 September 1999.

[8] Article 2 of the United Nations Declaration on the Elimination of Violence against Women defines violence as encompassing, but not limited to "physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation" (General Assembly resolution 48/104 of 20 December 1993).

[9] Blume, 1990, p. 4.

[10] E/CN.4/1996/53, para. 27.

[11] "Non-commercial sexual abuse of children in Bangladesh", Radda Barnen, 30 March 1997.

[12] Everybody's Business - 2nd National Conference on Children, Young People and Domestic Violence, Brisbane, 1998.

[13] A/54/411

[14] See E.CN/4/Sub.2/1999/17.

[15] W. Stacy and A. Shupe, The Family Secret, Boston, Ma., Beacon Press, 1983.

[16] Stark and Filcraft, 1985 and 1988.

[17] Peter G. Jaffe and Jeffrey L. Edleson, (eds.), Ending the Cycle of Violence: Community Responses to Children of Battered Women, Thousand Oaks, California, Sage Publications, 1995.

[18] Browne and Finkelhor, 1986.

[19] M.A. Straus, R.J. Gelles, and S. Steinmetz, Behind closed Doors. Doubleday, Anchor. 1980.

[20] M.A. Straus and R.J. Gelles (eds.), Physical Violence in American Families, New Brunswick, NJ, Transaction Publishers. 1990.

[21] Zorza, 1991.

[22] The International Summit of Sexually exploited Youth, held in Victoria, B.C, Canada in March 1998, and the 2nd National Conference on Children, Young People and Domestic Violence, held in Brisbane, Australia, in October 1998.

[23] In 1996 the State of Colombia passed Act No. 294, which elaborates on article 42 of the Constitution and lays down rules to prevent, remedy and punish intra-familial violence. This Act states that "a request for protection may be presented personally by the victim, or by any other person acting in his or her name, or by the defensor de familia if the victim is unable to do so" (art. 9). It also establishes that jurisdiction in cases of intra-familial violence lies with family magistrates or justices of the peace (art. 4).